

REMARKS / ARGUMENTS

This is intended as a full and complete response to the Office Action dated January 25, 2007, having a shortened statutory period for response set to expire on April 25, 2007. Please reconsider the claims pending in the application for reasons discussed below.

Claims 1-65 are pending in the application. Claims 1-5, 7-12, 15-19, 21-47, 50-52, 54, 55, 58-71 remain pending following entry of this response. Claims 1-3, 5, 7-12, 15-19, 21-35, 37-40, 42-44, 50-52, 64 and 65 have been amended. Claims 6, 13, 14, 20, 48, 49, 53, 56 and 57 have been cancelled. New claims 66-71 have been added to recite aspects of the invention. Applicants submit that the amendments and new claims do not introduce new matter.

Interview Summary

On April 10, 2007, a personal interview was held between Gero G. McClellan and Brandon Clark (both attorneys for Applicants), and Examiners William V. Gilbert and Basil Katcheves. The parties discussed the cited references including *Haseotes* and *Myers*. The parties also discussed proposed amendments to the independent claims. Some of these proposed amendments are reflected in this response.

During the interview, the attorneys for Applicants argued that *Haseotes* and *Myers*, alone or in combination, do not teach, show or suggest various features of the present invention. No agreement could be reached at the time of the interview, but the Examiners agreed that the proposed amendments discussed would clarify the claimed subject matter.

Claim Objections

Claim 20 is objected to. Applicants have made an appropriate amendment which is believed to obviate the objection. Accordingly, Applicants respectfully request that the objection be withdrawn.

Claim 56 objected to because, according to the Examiner, "claim 56 claims a method without actually claiming any method steps". Respectfully, the objection is not proper. Claim 56 recites a structural limitation; however, claim 56 depends from claim 50 which clearly recites method steps. It is well known that structural limitations in method claims are proper and are given patentable weight. The limitation recited in claim 56 is just as proper as a dependent claim as it would have been as a limitation in the respective base claim, claim 50. However, in order to move prosecution forward, Applicants have canceled the claim, without prejudice. Accordingly, Applicants request that the objection be withdrawn.

Claim Rejections under 35 U.S.C. § 112

Claims 1, 8, 19, 23, 27, 30, 39, 43 and 58 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

Applicants have made appropriate amendments to each of the rejected claims. Accordingly, Applicants respectfully request that the rejection be withdrawn.

Double Patenting Rejection

Claims 1-49 are provisionally rejected under 35 U.S.C. 101 as claiming the same invention as that of claims 1-49 of copending Application No. 10/768945. This is a provisional double patenting rejection since the conflicting claims have not in fact been patented.

Applicants submit that the amendments made herein obviate the double patenting rejection, as the claims are no longer the same. Accordingly, the Examiner is kindly requested to withdraw the rejection.

Claim Rejections Under 35 U.S.C. § 102

Claims 23 and 26 are rejected under 35 U.S.C. 102(b) as being anticipated by *Haseotes* (U.S. Patent No. 5,881,527).

This rejection is obviated in light of the present amendments. At a minimum, *Haseotes* does not disclose placing cryogenic delivery equipment on a concrete slab. Accordingly, Applicants respectfully request that the rejection be withdrawn and that the claims be allowed.

Claim Rejections Under 35 U.S.C. § 103

Claims 1-4, 6, 9-11, 15-20, 22, 25, 27-32, 39-41 and 44-49 are rejected under 35 U.S.C. 103(a) as being unpatentable over *Haseotes*.

Claim 5 is rejected under 35 U.S.C. 103(a) as being unpatentable over *Haseotes* in view of *Gaudelli* (U.S. Patent No. 4,660,344).

Claims 7 and 42 are rejected under 35 U.S.C. 103(a) as being unpatentable over *Haseotes* in view of *Hartman* (U.S. Patent No. 3,407,551).

Claim 8 is rejected under 35 U.S.C. 103(a) as being unpatentable over *Haseotes* in view of *Hartman* further in view of *Paquette* (U.S. Patent No. 5,720,135).

Claims 12-14, 21, 33-36 and 38 are rejected under 35 U.S.C. 103(a) as being unpatentable over *Haseotes* in view of *Myers* (U.S. Patent No. 5,386,699).

Claims 24 and 43 are rejected under 35 U.S.C. 103(a) as being unpatentable over *Haseotes* in view of *Paquette*.

Claim 37 is rejected under 35 U.S.C. 103(a) as being unpatentable over *Haseotes* in view of *Myers* further in view of *Gaudelli*.

Claims 50-58 and 60-65 are rejected under 35 U.S.C. 103(a) as being unpatentable over *Myers* in view of *Haseotes* (U.S. Patent No. 5,386,699).

The Examiner bears the initial burden of establishing a prima facie case of obviousness. See MPEP § 2142. To establish a prima facie case of obviousness three basic criteria must be met. First, there must be some suggestion or motivation, either in the references themselves or in the knowledge generally available to one ordinary skill in the art, to modify the reference or to combine the reference teachings. Second, there must be a reasonable expectation of success. Third, the

prior art reference (or references when combined) must teach or suggest all the claim limitations. See MPEP § 2143.

In this case, each of the base claims have been amended, thereby obviating the above rejections under 35 U.S.C. 103(a). However, Applicants provides the following observations in order to facilitate prosecution.

Overview of Cryogenic Delivery Installations

Historically, cryogenic delivery installations have been placed on permanent concrete foundations. By agreement between a supplier of a cryogen and a customer, the customer was responsible for building (or for contracting the building of) the permanent foundation. Once the foundation had fully cured, the supplier would install a cryogenic delivery apparatus on the foundation. The supplier would then supply a cryogen at a contracted volume, pursuant to the agreement. Once the agreement expired, the supplier would retrieve the cryogenic delivery installation. However, the pad, being permanent, would remain at the customer's site. Consequently, the customer could enter into a new agreement with the same or different supplier for delivery of a cryogen.

Embodiments of the Present Invention

Embodiments of the present invention provide for a preformed, portable concrete slab configured to support cryogenic delivery equipment. The slab can be formed at a manufacturing facility and then transported to a customer site. Cryogenic delivery equipment can then be placed on the upper surface of the slab. In one embodiment, the cryogenic delivery system may include a bulk storage tank configured to store liquid cryogen. The provision of such a portable concrete slab fundamentally changes the business relationship between a customer and supplier of cryogenic liquids. Specifically, suppliers of cryogenic liquids and cryogenic delivery equipment may now also supply the slab on which the equipment is placed. The supply of the cryogenic liquids, equipment and the slab may be pursuant to an agreement. In this way, the supplier may be the one-stop source for all the

necessary equipment and commodities (i.e. the cryogenic liquid) required by the customer. Once the lease agreement(s) under which the cryogenic liquid, equipment and slab are provided expires, the supplier may retrieve the equipment and slab.

Applicants' Response to Examiner's Rejections

In the present rejection, the Examiner attempts to combine a reference (*Haseotes*) that discloses a special-purpose portable foundation with one or more other references, and in particular with a reference (*Myers*) that teaches a natural gas liquefying apparatus disposed on a pad. Respectfully, reliance on such combinations evidence a failure to appreciate both the specific teachings of the references as well as the particularly relevant context in which liquid cryogenics are traditionally provided (as described above). As such, Applicants respectfully submit that the present rejections are made on the basis of a misapplication of the references and suggest the use on impermissible hindsight (see, MPEP § 2142 regarding impermissible hindsight).

The standard for a rejection under 35 U.S.C. 103(a) is whether the claimed invention would be obvious to a person of ordinary skill in the art at the time of the invention. A person of ordinary skill in the art of bulk cryogen delivery would know that the pervasive model of delivery entails the customer building a permanent foundation and the supplier providing equipment to be placed on the foundation. This has long been the standard. Accordingly, a suggestion that using a portable concrete slab as the foundation would be obvious in light of the art of record, disregards the fact that such an approach runs counter to the well-established approach in the industry. In this regard, it should be noted that using a portable concrete slab as a foundation for cryogenic delivery equipment is not merely a convenient alternative that provides every advantage over the existing approach without any disadvantages. For example, a permanent foundation is not subject to the logistical issues of lifting and transporting a portable concrete slab. Further, suppliers using permanent foundations are not subject to the obligations of maintaining an inventory of slabs, delivering the slabs and retrieving the slabs.

Further, the references of record do not support the proposed combination for lack of motivation and/or for lack of teaching all of the claimed elements, as is required for a *prima facie* case of obviousness. For example, the primary reference relied on is *Haseotes*. *Haseotes* is directed to a portable concrete slab for use in the floor of a building. (See, Abstract.) Exemplary buildings disclosed by the reference include on-site offices, classrooms and storage facilities. (Column 1, lines 49-51; and column 2, lines 38-42.) The fundamental basis of the claimed novelty in *Haseotes* is the provision of frame connecting means, securing means for connecting the frame connecting means to the portable slab and a frame connected to the frame connecting means, thereby building the structure for walls and roofs of buildings. (See, column 2, lines 57-67; and Figure 6.) In other words, *Haseotes* is fundamentally directed to a portable foundation having the necessary equipment to erect walls thereon.

Such a reference runs counter to the claimed embodiments of a portable concrete slab having cryogenic delivery equipment disposed thereon. More specifically, a reference directed to a foundation for buildings forming enclosures to house personal goods or to accommodate the residence and movement of human beings, as in the case of *Haseotes*, teaches away from a slab whose upper surface is occupied by large fixtures (in that it would prevent the storage of objects or accommodation of human beings). Further, housing cryogenic delivery equipment is not typically feasible for reasons of safety concerns. Still further, a number of claims now specifically recite the absence of walls disposed on the upper surface of the claimed slab (see, claims 1, 15, and 67-70).

Therefore, on the basis of *Haseotes* alone, Applicants believe the rejection is improper and respectfully request that the rejection be withdrawn and claims be allowed.

Myers discloses an apparatus for liquefying natural gas for fuel for vehicles. The Examiner relies on *Myers* for its disclosure of a dewar 78 (which the Examiner analogizes to a storage tank) disposed on a pad 117. (See, Figure 3.) However, the dewar 78 is an integrated component of the self-contained liquefying apparatus 21 as

evidenced by the fact that Figure 3 shows the dewar 78 hard-piped to a filter 28 and to a primary heat exchanger 56. Accordingly, the dewar 78 is not selectively connected and disconnected from a source of cryogen. Rather, the dewar 78 remains permanently connected to the source of the natural gas as an integrated component of the overall system. It should also be noted that a person of ordinary skill in the art distinguishes between a dewar (which is a relatively small volume container) a bulk storage tank (which is a substantially larger volume container).

Gaudelli is directed to forming interlocking concrete pieces that form the edge siding of roads, streets, and driveways. Thus, *Gaudelli* does not disclose either portable foundations or cryogenic delivery equipment.

Hartman is directed to removable bulk feed storage containers. *Hartman* presumes a permanent foundation on which the containers are placed. (See, e.g., Column 1, lines 41-47.) Thus, *Hartman* does not disclose either portable foundations or cryogenic delivery equipment.

Paquette is directed to a modular parking garage. The deck panels which form the floors of the garage are made of steel, and the only mention of foundations is with respect to conventional, large, permanent foundations. (See, e.g., Column 6, lines 19-24.) Thus, *Paquette* does not disclose either portable foundations or cryogenic delivery equipment.

Therefore, Applicants submit that *Haseotes*, *Gaudelli*, *Hartman*, *Paquette* and *Myers*, alone or in combination, do not teach, show or suggest the claimed invention and, therefore, cannot be used to establish a *prima facie* case of obviousness.

Therefore, the claims are believed to be allowable, and allowance of the claims is respectfully requested.

CONCLUSION

Accordingly, it is believed that the present application now stands in condition for allowance, and allowance of the claims is respectfully requested. Early notice to this effect is earnestly solicited. Should the Examiner believe a telephone call would expedite the prosecution of the application, he is invited to call the undersigned attorney at the number listed below.

Respectfully submitted, and
S-signed pursuant to 37 CFR 1.4,

/Gero G. McClellan, Reg. No. 44,227/

Gero G. McClellan
Registration No. 44,227
PATTERSON & SHERIDAN, L.L.P.
3040 Post Oak Blvd. Suite 1500
Houston, TX 77056
Telephone: (713) 623-4844
Facsimile: (713) 623-4846
Attorney for Applicants